IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1022 OF 2006

Shri Krishna Narayan Shevale
(since deceased) by LRs.
Ganpat Krishna Shevale & Ors. .. Appellants.
Vs.
Vithal Moreshwar Deshpande & Ors. .. Respondents.

Mr.Vineet Naik for the appellants.
Mr.Uday Warunjikar for respondent no.4.

CORAM : D.B.BHOSALE, J.
DATED : 20TH FEBRUARY, 2007

P.C.:

. Heard learned counsel for the parties.

2. This appeal is directed against the concurrent judgments of the courts below by which the respondent-plaintiffs' suit for redemption of mortgage, execution of reconveyance deed and mesne profits in respect of the suit property stands decreed. It is clear from the observations made by the appellate court in paragraph 12 of the judgment, the nature of a document was not in dispute and it was admitted in clear terms that the plaintiff had incurred the loan and executed the deed of mortgage dated 31.5.1962.

3. Mr.Naik, learned counsel for the appellants vehemently submitted that the provisions of section 67 of the Transfer of Property Act (for short "the Act")

were overlooked by the courts below. He submitted that only in the absence of a contract to the contrary the mortgagee has a right to obtain from the court a decree that the mortgagor shall be absolutely debarred of his right to redeem the property or a decree that the property be sold. In other words, he submitted that if there is a contract to the contrary, as contemplated under section 67 of the Act, the mortgagee at any time, after the mortgage money has become due to him, and before a decree has been made for redemption of the mortgaged property, or the mortgage money has been paid or deposited, has a right to foreclose the mortgagor's right to obtain from the court a decree of redemption of mortgage. In the facts of the present case, he submitted that there was a contract to the contrary as contemplated under section 67. In support of this contention he invited my attention to the clause in the deed of mortgage dated 31.5.1962 wherein six years period was provided for to repay the amount and get the property released/redeemed. This clause according to Mr.Naik is a contract to the contrary as contemplated by section 67 of the Act and therefore the mortgagor after 6 years lost his right to seek redemption. Both the courts below have concurrently held that the document in question is a mortgage deed by conditional sale. The condition in the deed in the present case,

in my opinion, cannot be treated as a contract, as contemplated under section 67 of the Act, and hold the right of the mortgagor has been forclosed. That is not the purport of the expression "contract to the contrary" as appear in section 67 of the Act. In the circumstances the only submission advanced by Mr.Naik that the provisions of section 67 of Transfer of Property Act were completely overlooked by the courts below must be rejected. I find no reason to interfere with the findings of fact recorded by the courts below holding that the plaintiff is entitle to seek redemption of the mortgage. It may also be noticed that the contention based upon section 67 was not raised before the courts below nor such contention was pleaded in the written statement apart from the fact the appellant even did not step into witness box. Considering that there are concurrent findings recorded by the courts below and as I find sufficient material on record to sustain those findings and considering extremely limited jurisdiction of this court to disturb the findings of fact, this appeal deserves to be rejected. Order accordingly.

(D.B.Bhosale, J.)